

ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In The Matter of

INTERNATIONAL BENCHMARK RATES

IB Docket No. 96-261

**COMMENTS OF THE
TELECOMMUNICATIONS RESELLERS ASSOCIATION**

The Telecommunications Resellers Association ("TRA"), through undersigned counsel and pursuant to Section 1.415 of the Commission's Rules, 47 C.F.R. § 1.415, hereby submits its Comments in response to the Notice of Proposed Rulemaking, FCC 96-484, released by the Commission in the captioned docket on December 19, 1996 (the "Notice"). In this proceeding, the Commission proposes to revise its existing benchmark settlement rates for terminating in other countries international message telephone service ("IMTS") originated in the United States. TRA wholeheartedly endorses the pro-competitive goals identified for this proceeding, and concurs with the Notice that the Commission should continue to pursue its efforts to foster competition in the global telecommunications market, with the aim of ultimately driving settlement rates toward economic cost. TRA, however, is deeply concerned that certain of the stratagems proposed in the Notice for achieving these laudable objectives will adversely impact the many small to mid-sized carriers that currently provide IMTS service. TRA, accordingly, urges the Commission to move cautiously so as not to inadvertently dampen competition while seeking to achieve pro-competitive ends.

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I.

INTRODUCTION

A national trade association, TRA represents more than 500 entities engaged in, or providing products and services in support of, telecommunications resale. TRA was created, and carries a continuing mandate, to foster and promote telecommunications resale, to support the telecommunications resale industry and to protect the interests of entities engaged in the resale of telecommunications services. Although initially engaged almost exclusively in the provision of domestic interexchange telecommunications services, TRA's resale carrier members -- the bulk of whom are small to mid-sized, albeit high-growth, companies¹ -- have aggressively entered new markets and are now actively reselling a variety of other services. Virtually all of TRA's resale carrier members provide IMTS and other international services, a number providing such services as their primary offerings.

TRA has long been a champion of competition in the telecommunications industry, recognizing that the emergence, growth and development of a vibrant telecommunications resale industry is a direct product of a series of pro-competitive initiatives implemented, pro-competitive policies adopted and pro-competitive actions taken, by the Congress, the Courts, the Commission and various state regulatory bodies over the past decade. Accordingly, TRA endorses the

¹ The average TRA resale carrier member has been in business for five years, serves 10,000 customers, generates annual revenues of \$10 million and employs in the neighborhood of 50 people. Among TRA's resale carrier members, roughly 30 percent have been in business for less than three years and over 80 percent were founded within the last decade. And while the growth of TRA's resale carrier members has been remarkable, the large majority of these entities remain relatively small. Nearly 25 percent of TRA's resale carrier members generate revenues of \$5 million or less a year and less than 20 percent have reached the \$50 million threshold. Seventy-five percent of TRA's resale carrier members employ less than 100 people and nearly 50 percent have work forces of 25 or less. Nonetheless, more than a third of TRA's resale carrier members provide service to 25,000 or more customers.

announced goals of this proceeding to "(1) to promote effective competition in the global market for communications services; (2) to prevent anticompetitive conduct in the provision of international services or facilities; and (3) to encourage foreign governments to open their communications markets."² TRA agrees with the Notice that the Commission should continue its efforts to "achiev[e] settlement rates that more closely resemble the level that would be established in a competitive market for termination of international services" and further concurs that "in such a competitive market settlement rates would be close to the incremental cost of providing international termination service."³

As noted above, however, TRA is concerned that in the Commission's zeal to achieve these important pro-competitive ends, it not take actions here which would adversely impact the small to mid-sized carriers that have generated much of the competitive pressure in the global market to date. Certainly, small to mid-sized carriers are the most vulnerable to the retaliatory actions that may be taken by foreign carriers. Small to mid-sized carriers are also the most likely to encounter increased resistance to negotiation of new operating agreements. And small to mid-sized resale carriers are the most likely to be competitively disadvantaged if settlement rates are driven toward economic cost and the reductions are not flowed through to all customers.

Accordingly, TRA strongly urges the Commission not to compel small to mid-sized carriers to abrogate existing, or to enter only into new short term, settlement rate agreements. TRA further urges the Commission to require carriers that are the direct

² Notice, FCC 96-484 at ¶ 5.

³ Id. at ¶ 3.

beneficiaries of settlement rate reductions to flow-through such reductions to their resale carrier customers.

II

ARGUMENT

A. **Small to Mid-Sized Carriers will be Adversely Impacted if Compelled to Abrogate or Renegotiate Settlement Rate Agreements**

In the Notice, the Commission proposes to revise its benchmark settlement rates downward to better reflect the costs incurred by foreign carriers in terminating international traffic, as well as the changing market and technological environment. Reasoning that "in light of the significant technological and market changes occurring in the global telecommunications market [it] should to beyond . . . multilateral steps to encourage settlement rate reform," the Commission proposes to "act domestically to encourage lower settlement rates and ultimately, international calling prices to U.S. consumers."⁴ Having concluded that market forces cannot be relied upon "to achieve timely reform of accounting rates in markets with no or limited competition," the Commission proposes to establish settlement rate benchmark ranges predicated on countries' levels of economic development and carriers' tariffed component prices.⁵ Moreover, the Commission proposes to establish a "transition schedule" for full compliance with these settlement rate benchmark ranges.⁶ TRA's concerns arise not out of these proposals, but the Commission's associated enforcement proposals.

⁴ Id. at ¶ 18.

⁵ Id. at ¶¶ 18, 39 - 57.

⁶ Id. at ¶¶ 58 - 68.

Noting that it "expect[s] carriers to negotiate settlement rates at or below [its] benchmarks within the relevant transition periods," the Commission details the steps it intends to take in the event a foreign carrier fails to make "meaningful progress" toward complying with the established settlement rate benchmark ranges.⁷ Most disturbing to TRA and its many small to mid-sized carrier members is the Commission's proposal to direct U.S. carriers to pay settlement rates which are less than those to which they have contractually committed to pay or to enter only into short-term settlement rate agreements.⁸

It is one thing for an AT&T Corp. ("AT&T") to refuse to honor a settlement rate agreement at the direction of the Commission; it is something altogether different for a small to mid-sized carrier to do so. AT&T stands on comparable, if not superior, footing with its foreign counterparts. AT&T not only delivers far greater traffic volumes, but has access to resources which far outstrip those of its small to mid-sized U.S.-based competitors. AT&T is thus both a more attractive business opportunity and a more formidable opponent. Accordingly, retaliatory action taken by foreign carriers for perceived contract abrogation by U.S. providers is far more likely be directed at small to mid-sized providers, than it is at AT&T.

Retaliation by foreign carriers based on actions taken by U.S.-based carriers at the direction of the Commission is not a mere theoretical possibility. Within the last year, the Commission has been compelled to take action against several foreign carrier for engaging in

⁷ Id. at ¶¶ 87 - 88.

⁸ Id. at ¶ 89.

such conduct.⁹ TRA is pleased by the Commission's "commitment to vigorous enforcement of the nondiscrimination requirement of [the international settlements policy ("ISP")]" and commends the Commission for its straightforward declaration that "discriminatory and retaliatory behavior by foreign carriers in violation of the ISP will not be tolerated."¹⁰ Nonetheless, Commission enforcement actions must by necessity be selective and subject to significant time lags. The damage that can be inflicted on a small to mid-sized carrier while awaiting Commission action, which may never come, can be immeasurable.

For small to mid-sized carriers, retaliatory actions need not be as obvious as they are with respect to AT&T and other large competitors. A small to mid-sized carrier may simply be denied the opportunity to negotiate an operating agreement it otherwise would have had in a less contentious environment. The foreign carrier may simply elect not to marshal the personnel and other resources necessary to pursue negotiations with a small to mid-sized carrier. Certainly, operating agreements are more easily obtained today than they were a decade ago, but for small to mid-sized carriers, securing such agreements is still generally an ordeal, and far from a certainty. Accordingly, directing a small to mid-sized carrier to effectively abrogate an existing operating agreement or to enter only into short-term settlement rate agreements would likely be highly detrimental.

⁹ See, e.g., AT&T Corp. Proposed Extension of Accounting Rate Agreement for Switched Voice Service with Argentina, DA 96-378 (released March 18, 1996); AT&T Corp., MCI Telecommunications Corp., Sprint, and LDDS WorldCom Petitions for Waiver of the International Settlements Policy to Change the Accounting Rate for Switched Voice Service with Peru, DA 96-696 (released May 7, 1996); Petition for Waiver of the International Settlements Policy to Change the Accounting Rate for Switched Voice Service with Bolivia, DA 96-714 (released May 7, 1996).

¹⁰ Notice, FCC 96-484 at ¶ 90.

In short, small to mid-sized carriers are not well positioned to confront foreign carriers even at the behest of the Commission. While implementation of the Commission's proposals here might well serve a broad public policy purpose, the global benefits will be lost on small to mid-sized carriers whose businesses are lost or damaged during the process. TRA strongly urges the Commission not to force small to mid-sized carriers into harms way by requiring them to engage in conduct which will be perceived to be in breach of contractual commitments. AT&T and other large carrier may survive the aftermath; the small to mid-sized provider may not.

B. Flow-Through of Settlement Rate Reductions to Resale Carrier Customers Should be Mandated

The Notice discusses at length the public interest benefits to be derived from driving international settlement rates toward the economic cost of terminating international traffic. These benefits are generally predicated on the assumption that reductions in settlement rates will result in lower charges for carriage of international traffic. Thus, the Notice notes that "inflated settlement rates represent a major subsidy from U.S. consumers, carriers and their shareholders to foreign carriers and raise prices for international services for U.S. consumers many times above the costs of providing those services."¹¹ Reductions in settlement rates, according to the Notice, will thus produce "reductions in the price of international telephone service," which in turn will "significantly stimulate traffic flows . . . provide additional financing for network infrastructure and result in a more ubiquitous global telecommunications network."¹²

¹¹ Id. at ¶ 7.

¹² Id. at ¶ 10.

Reductions in settlement rates will only have these beneficial impacts if they are flowed through to customers. If carriers retain all or some portion of the savings resulting from the Commission's aggressive pro-competitive policies in the international arena, none of the benefits noted in the Notice will be realized. If network service providers do not flow through savings to their resale customers, the resale carrier customers cannot provide their customers with more affordable IMTS service.

The issue of the flow-through of reductions in carrier-to-carrier charges will arise again in the context of the Commission's rulemaking proceeding to reform interstate access charges.¹³ There, as here, the public benefit of pro-competitive Commission actions will be dependent upon the extent to which customers see reductions in rates. The Commission should use this opportunity to send a clear signal that customers, not carriers, should be the prime beneficiaries of regulatory-driven cost savings by requiring carriers to flow-through savings realized as a result of settlement rate reductions to their customers, including their resale carrier customers.

¹³ Access Charge Reform, CC Docket No. 96-262, FCC 96-488 (released December 24, 1996).


III.

CONCLUSION

By reason of the foregoing, the Telecommunications Resellers Association urges the Commission to adopt rules and policies in this docket consistent with these comments.

Respectfully submitted,

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